IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.522 OF 2004

Advani Oerlikon Ltd. ..Appellant.

V/s.

Dy.Commissioner of Income Tax ..Respondent.

Mr.A.K.Jasani i/b. S.N. Inamdar for appellant.

Mr.A.N.Kotangale for respondent.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 29TH JANUARY, 2007.

P.C. :-

Heard learned counsel for the appellant and the respondent. In the above appeal, the following substantial questions of law arise:-

1) On the facts and in the circumstances of the case, whether the Tribunal was right, merely following earlier year's order, when the issue of nexus of borrowing and advances was basically raised and supported before it and consequently disallowing the interest of Rs.19,04,160/- ?

2) Whether Appellate Tribunal was justified in taking the Auditors remarks, which only said that the sums advanced may be considered, prima facie prejudicial to the interest of the Company, without examining the business relationship between the assessee and its sister concern ?

3) Whether Appellate Tribunal was justified in law in disallowing notional interest on borrowings attributable to advance made to M/s.Ador

Travels Limited, in respect of whom there are no adverse remarks pointed out by the Auditors?

2. Learned Counsel for the appellant brought to our notice the recent Judgment of the Supreme Court in **S.A.Builders Ltd. V/s. Commissioner of Income-tax (Appeals) and Anr.** reported in **(2007) 288 I.T.R. 1 (S.C.)** where by the Hon'ble Supreme Court has clearly held that the expenditure may not have been incurred under any legal obligation but yet it is allowable if it was incurred on ground of commercial expediency. The Tribunal has not considered this aspect whether it was allowable as business expenditure if it was incurred on the ground of commercial expediency. In view thereof, we quash and set aside the order of the Income Tax Appellate Tribunal dated 30/10/2003 and remand back the matter to the Tribunal to decide the same strictly on its own merits.

3. Appeal stands disposed of accordingly.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)